

**BEFORE THE ARIZONA BOARD OF  
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

IN THE MATTER OF:

) Case No. 3250  
)

ETHAN O. KENNEDY, D.O. )

Holder of License No. 3123 for the )  
practice of osteopathic medicine in the )  
State of Arizona. )  
\_\_\_\_\_ )

**STIPULATION TO  
ENTRY OF CONSENT ORDER  
FOR PROBATION AND RESTRICTION**

**STIPULATION**

By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners (hereafter "Board") and Ethan Kennedy, D.O. (hereinafter "Respondent"), the parties hereto agree to the following disposition to this matter.

1. Respondent acknowledges that he has read this Stipulation and the attached Consent Order; and, Respondent is aware of and understands the content of these documents.

2. Respondent understands that by entering into this Stipulation, he voluntarily relinquishes any rights to a hearing on the matters alleged as grounds for Board action or to seek judicial review of the consent order in state or federal court.

3. Respondent understands that this Stipulation and Consent Order will not become effective unless approved by the Board and signed by its Executive Director.

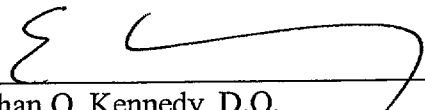
4. Respondent further understands that this Stipulation and Consent Order, once approved and signed, shall constitute a public record that will be disseminated as a formal action of the Board as required by A.R.S. §§ 32-1855 (J) and (K), including being reported to the National Practitioner Data Bank and the Federation of State Medical Boards.

5. Respondent admits to the statement of facts and conclusions of law contained in the Consent Order.

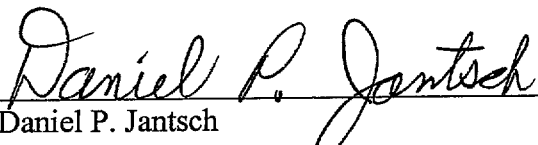
6. All admissions made by Respondent are solely for final disposition of this matter and any subsequent administrative proceedings or litigation involving the Board, Respondent and the State of Arizona; and, therefore, said admissions by Respondent are not intended for any other purpose or administrative regulatory proceeding or litigation in another state or federal court.

7. Respondent acknowledges and agrees that upon signing and returning this document (or a copy thereof) to the Board's Executive Director, he may not later revoke or amend this Stipulation or any part of the Consent Order, although said Stipulation has not yet been accepted by the Board and issued by its Executive Director, without first obtaining Board approval.

**REVIEWED AND ACCEPTED** this 2<sup>nd</sup> day of March, 2004.

  
\_\_\_\_\_  
Ethan O. Kennedy, D.O.

**REVIEWED AND APPROVED** as to form by counsel for Respondent on this 2<sup>nd</sup> day of MARCH, 2004.

  
\_\_\_\_\_  
Daniel P. Jantsch  
Counsel for Respondent

**BEFORE THE ARIZONA BOARD OF  
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

IN THE MATTER OF: )

ETHAN O. KENNEDY, D.O. )  
Holder of License No. 3123 for the )  
practice of osteopathic medicine )  
in the State of Arizona. )  
\_\_\_\_\_ )

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND CONSENT ORDER FOR  
PROBATION AND RESTRICTION**

On September 23, 2003, the AZ Board of Osteopathic Examiners (hereinafter "Board") served Findings of Fact, Conclusions of Law and Order of Summary Suspension on Ethan Kennedy, D.O. (hereinafter "Respondent").

An administrative hearing in this matter was noticed for October 25, 2003. The hearing was continued at the request of Respondent and his counsel.

At a meeting of the Board on January 24, 2004, the Respondent and his counsel agreed to entry of this Findings of Fact, Conclusions of Law, and Consent Order of Probation and Restriction.

**JURISDICTIONAL STATEMENTS**

1. The Board is empowered, pursuant to A.R.S. §§ 32-1800 *et seq.* to regulate the licensing and practice of osteopathic medicine in Arizona.

2. Ethan Kennedy, D.O., (hereafter "Respondent"), is a licensee of the Board and the holder of License No. 3123.

**FINDINGS OF FACT**

3. On or about September 10, 2003, the Board obtained information from the Drug Enforcement Agency that Respondent may be medically and/or psychologically unable to safely and skillfully engage in the practice of medicine and may have committed one or more acts of unprofessional conduct as defined in A.R.S. § 32-1854.

4. On September 11, 2003 the Board's Executive Director issued an Order for Random Urine Drug Screens for Respondent.

5. On September 15, 2003, the results of that screen showed that Respondent was positive for bupropion, tramadol, and methadone. The methadone quantitative result was 9,144 ng/ml.

6. On September 15, 2003, Respondent informed the Executive Director that he was currently under the care of two physicians who had prescribed him medications; that Thomas Grade, M.D. prescribed methadone, and that Paul Jendre, D.O., Respondent's partner, prescribed Ativan (lorazepam).

7. Patient records obtained from Dr. Grade showed Respondent had been a patient July through October 2000, and had not been seen again until September 12, 2003. There was no record that Respondent was prescribed methadone, bupropion, or tramadol by Dr. Grade on or prior to September 11, 2003.

8. Patient records obtained from Dr. Jendre showed Respondent had been seen once, on or about June 25, 2003, at which time Respondent was prescribed Ativan. There was no record that Respondent was prescribed or taking methadone, bupropion, or tramadol, or any medication other than Ativan.

9. On September 23, 2003, Respondent informed the Executive Director that he was obtaining the methadone from his patients, when they returned to him methadone he had prescribed for their therapeutic use.

10. On or about October 12, 2003, Respondent entered an in-patient treatment program wherein he was diagnosed as being addicted to narcotics and was treated for substance abuse. On or about February 10, 2004, the program recommended the Respondent's release to out-patient monitoring.

### CONCLUSIONS OF LAW

11. The conduct described in paragraphs 3-5 above constitutes unprofessional conduct as described in A.R.S. § 32-1854 (3) "Practicing medicine while under the influence of alcohol, narcotic or hypnotic drugs or any substances that impairs or may impair the licensee's ability to safely and skillfully practice medicine, (6) Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the standards of the community, and (40) Any conduct practice that impairs a patient's or the public's health or may reasonably be expected to do so.

12. The conduct described in paragraphs 4, 5, 7, 8, and 9 constitutes unprofessional conduct as described in A.R.S. § 32-1854 (22) Using controlled substances or prescription-only drugs unless they are provide by a medical practitioner, as defined in section 32-1901, as part of a lawful course of treatment.

13. The conduct described in paragraph 10 constitutes unprofessional conduct as described in A.R.S. § 32-1854 (4) Being diagnosed by a physician licensed under this chapter or chapter 13 of this titles or a psychologist licensed under chapter 19.1 of this title as excessively or illegally using alcohol or a controlled substance.

### ORDER

Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED THAT:**

Ethan O. Kennedy, D.O. ("Respondent"), holder of license 3123, shall be on **PROBATION** for five (5) years and he shall comply with the terms and conditions of probation as set forth herein:

1. Respondent's license shall be **RESTRICTED** in that he shall not, from the effective date of this Order, prescribe Schedule II or III drugs, or any Schedule IV or V drugs that the Board determines have potential to be drugs of addiction.

2. Respondent's license shall be **RESTRICTED** in that he shall not practice more than

40 hours per week, nor shall he be on-call for more than seven (7) days in a calendar month.

3. Respondent shall obtain psychiatric or psychological treatment by a therapist(s) who is either a licensed psychiatrist and/or psychologist and is selected by Respondent and approved by the Board. Respondent shall inform the Board in writing, within ten days of the date of this Order, of the therapist's name, address and telephone number. Respondent shall comply with the therapist's recommendation for the frequency of therapy treatment sessions, and shall undertake and fully cooperate with a program of treatment established by the therapist. In the event Respondent changes therapists, he shall give the Board written notice within ten (10) days of said action. In the event that Respondent is treated with psychotropic drugs, those drugs must be prescribed and monitored by a psychiatrist.

4. Respondent's therapist(s) shall receive a copy of this Order and Board staff shall cooperate with and disclose all relevant information in the Board's files concerning Respondent. The treating therapist shall be directed by Respondent to send to the Board a written progress report within 30 days of the initial visit, and quarterly for the remainder of the probation. Respondent shall waive any confidentiality concerning his psychotherapy so that the Board may receive full disclosure of information. The expense of the therapy and the reports to the Board by Respondent's therapist shall be the sole responsibility of the Respondent.

5. Respondent shall provide a copy of this Order and any subsequent Orders or Amendments to all facilities where Respondent is currently (or subsequently) employed as a physician and/or has (or subsequently receives) privileges to engage in the practice of medicine.

6. Respondent shall provide notice of his substance abuse history to all treating health care providers with authority to prescribe controlled substances, such as physicians, dentists, physician assistants, and nurse practitioners, including those seen at emergency rooms or urgent care

centers. Notice may be accomplished by providing a copy of this Order to each health care provider, or by otherwise ensuring that his substance abuse history is documented in the provider's medical records of Respondent's care. Also, Respondent shall notify the Board staff of the name of any health care provider from whom he sought care within 72 hours of his first visit to that health care provider. Respondent shall notify the Board of the name of his primary care provider who will monitor all prescriptions written for Respondent.

7. Respondent shall abstain completely from the consumption of alcoholic beverages or any substance with alcohol (i.e. cough syrups); and Respondent shall not consume illicit drugs or take any controlled substances (i.e., prescription only drugs), unless they are prescribed for him by a health care provider who has been notified of his substance abuse history. Respondent shall provide to the Board staff a monthly log of all drugs and over the counter medications he has been prescribed or has taken.

8. Respondent shall submit to random biological fluid testing at a facility approved by the Board. Respondent shall promptly provide (i.e., within sixty (60) minutes of notification) required biological fluids for testing. Testing shall be done at the Respondent's expense. Failure to submit to testing, without prior notice to the Board staff of an excused reason, shall be treated as if the test results were positive for alcohol or drugs.

9. Respondent shall participate in 90 self-help meetings in 90 days, and thereafter a minimum of three (3) self-help meetings per week. The self-help meetings may be through such organizations as Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous, or a doctor's Caduceus group. Respondent shall keep a log of all meetings attended and have each meeting he attends signed by the chairperson of the meeting. Respondent will provide the Board with a copy of the signed log the first of every month.

10. If the Board so orders, Respondent shall submit to and cooperate in any independent medical or psychological evaluation that may be ordered by the Board and conducted by a designated physician and/or psychologist, which shall be paid for by Respondent.

11. Respondent shall appear before the Board or staff upon receipt of a request by written, telephonic, or electronic notification from the Board staff given at least five (5) days prior to the meeting.

12. Respondent shall reimburse the Board for all expenses associated with the investigation, hearing and continued monitoring of this matter.

13. Respondent shall continue to meet all licensing requirements, including renewal of his license and payment of applicable fees pursuant to A.R.S. § 32-1825.

14. In the event Respondent moves from Arizona or ceases to practice medicine in Arizona while still maintaining an Arizona license, he shall give written notice to the Board within twenty (20) days of moving or ceasing practice. The Board may stay the terms and duration of probation until Respondent again practices medicine in Arizona, or may take other action.

15. Respondent's failure to comply with the terms of this Order shall constitute unprofessional conduct as defined at A.R.S. § 32-1854(26) and may be considered grounds for further disciplinary action.

ISSUED AND EFFECTIVE this 2nd day of March, 2004.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS  
IN MEDICINE AND SURGERY

By: Elaine LeTarte  
Elaine LeTarte, Executive Director



Served by personal service or  
sending U.S. certified mail  
this 2<sup>nd</sup> day of March 2004 to:

Ethan Kennedy, D.O.  
212 W. Superstition Blvd. #101  
Apache Junction, AZ 85220

Copy mailed this \_\_\_\_\_ day of \_\_\_\_\_ 2004 to:

3/2/04 Daniel P. Jantsch (personal)  
Olson, Jantsch & Bakker  
7243 N 16<sup>th</sup> Street  
Phoenix AZ 85020

Blair Driggs  
Assistant Attorney General  
Office of the Attorney General  
1275 W. Washington  
Phoenix AZ 85007

Arizona Board of Pharmacy  
4425 W. Olive Ave., Suite 140  
Glendale AZ 85302-3844

Drug Enforcement Administration  
Attention: Diversion Section  
3010 N. 2nd St  
Phoenix AZ 85012

---